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ATTORNEY DOCKET NO. CONFIRMATION NO. FIRST NAMED INVENTOR APPLICATION NO. FILING DATE 10/699,587 10/31/2003 T. Scott Kennedy RCX-022.01 1881 **EXAMINER** 7590 25181 08/19/2004 ALIMENTI, SUSAN C FOLEY HOAG, LLP PATENT GROUP, WORLD TRADE CENTER WEST ART UNIT PAPER NUMBER 155 SEAPORT BLVD BOSTON, MA 02110 3644 DATE MAILED: 08/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/699,587	KENNEDY, T. SCOTT
	Examiner	Art Unit
	Susan C. Alimenti	3644
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply		
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).		
Status		
1) Responsive to communication(s) filed on 31 Oc	ctober 2003.	
2a) This action is FINAL . 2b) This action is non-final.		
3) Since this application is in condition for allowance except for formal matters, prosecution as to the ments is		
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.		
Disposition of Claims		
4) ☐ Claim(s) 1-24 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) 1-24 are subject to restriction and/or election requirement.		
Application Papers		
9) The specification is objected to by the Examiner.		
10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.		
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.		
Priority under 35 U.S.C. § 119		
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 		
Attachment(s)		
Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date	4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal P 6) Other:	

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DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claim 1-23, drawn to a tray, classified in class 47, subclass 77.

II. Claim 24, drawn to a process of making a tray, classified in class 264, subclass

540.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions

are distinct if either or both of the following can be shown: (1) that the process as claimed can be

used to make other and materially different product or (2) that the product as claimed can be

made by another and materially different process (MPEP § 806.05(f)). In the instant case the

process of invention II can be used to make any type of plastic container and, furthermore, the

product of invention I can be made by an alternative process such as vacuum or injection

molding.

Because these inventions are distinct for the reasons given above and have acquired a

separate status in the art as shown by their different classification, restriction for examination

purposes as indicated is proper.

3. This application contains claims directed to the following patentably distinct species of

the claimed invention it is further noted that the following species are listed, as best understood.

based on the interpretation of the figures, which are poor in quality;

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Species 1 as viewed in Figure 1, Species 2 as viewed in Figure 2, Species 3 as viewed in Figure 3, Species 4 as viewed in Figure 4 and Species 5 as viewed in Figure 5.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

4. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

- 5. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.
- 6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 703-306-0360. The examiner can normally be reached on Monday-Friday, 9am-5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCA

MICHAEL J. W. SUPERVISORY PATE OF EXPERIENCE